

0100444042

RECORDATION NO. 19077-ED 1425

NOV 30 1994 11:00 AM

INTERSTATE COMMERCE COMMISSION

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ALVORD AND ALVORD

ATTORNEYS AT LAW

918 SIXTEENTH STREET, N.W.

SUITE 200

WASHINGTON, D.C.

20006-2973

(202) 393-2266

Fax (202) 393-2156

OF COUNSEL
URBAN A. LESTER

November 30, 1994

RECORDATION NO. 19077-A
FILED 1425

NOV 30 1994 11:00 AM

INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two executed copies of the following documents, both dated as of November 30, 1994: a VAK Pledge Agreement, a primary document, and a RBF Assignment and Security Agreement, a secondary document related thereto.

The names and addresses of the parties to the enclosed document are:

VAK Pledge Agreement

Debtor: Vincent A. Kolber
Three First National Plaza, Suite 1240
Chicago, Illinois 60602

Secured Party: Heller Financial, Inc.
500 West Monroe Street
Chicago, Illinois 60661

RBF Assignment and Security Agreement

Debtor: Residual Based Finance Corporation
Three First National Plaza, Suite 1240
Chicago, Illinois 60602

Secured Party: Vincent A. Kolber
Three First National Plaza, Suite 1240
Chicago, Illinois 60602

Mr. Vernon A. Williams
November 30, 1994
Page 2

A description of the railroad equipment covered by the enclosed document is: certain railcars and locomotives and leases related thereto as set forth on Exhibit A attached hereto.

Also enclosed is a check in the amount of \$42.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a stylized flourish at the end.

Robert W. Alvord

RWA/bg
Enclosures

EXHIBIT A

Description of Equipment and Lease

I. Collateral related to Tucson Electric Power Company (the "TEP Collateral"):

Equipment:

105, 100-ton rotary dump gondola railroad cars manufactured by Ortner Freight Car Company bearing the following marks: OFSX 84001-84110 (excluding 84045, 84017, 84033, 84075 and 84060).

Lease:

Lease of Railroad Equipment dated as of April 27, 1993 (the "Lease") between Residual Based Finance Corporation, an Illinois corporation, and Tucson Electric Power Company, an Arizona corporation.

II. Collateral related to General Electric Railcar Services Corporation (the "GE Collateral"):

Equipment:

Seven (7) 2,000 Horsepower GP38-2 Locomotives manufactured by General Motors Corporation (Electro-Motive Division) and numbered ATSF2374 through ATSF2380, inclusive, formerly ATSF 3565 through 3571, inclusive, and prior thereto TP&W 2005 through 2011, inclusive.

Lease:

Lease dated as of September 15, 1978 between (i) Residual Based Finance Corporation ("Lessor"), as assignee of LaSalle National Trust, N.A., as successor to Exchange National Bank of Chicago, and (ii) General Electric Railcar Services Corporation, as successor to NAC Leasing Corporation.

RECORDATION NO. 19077 FILED 1994
NOV 30 1994 11:59 AM

VAK PLEDGE AGREEMENT INTERNATIONAL FINANCIAL CORPORATION

PLEDGE AGREEMENT dated as November 30, 1994, made by Vincent A. Kolber, an individual residing in Chicago, Illinois ("Debtor"), to Heller Financial, Inc. ("Secured Party").

RECITALS:

A. Concurrently herewith Secured Party is lending certain funds to Debtor evidenced by that certain promissory note dated November 30, 1994 issued by Debtor to Secured Party which note is captioned "VAK Promissory Note" (as the same may be amended, modified or supplemented from time to time, the "Note").

B. Concurrently herewith Debtor is lending such funds received by it from Secured Party to Residual Based Finance Corporation, an Illinois corporation ("RBF"), which loan is evidenced by that certain promissory note dated November 30, 1994 issued by RBF to Debtor which note is captioned "RBF Promissory Note" (as the same may be amended, modified or supplemented from time to time, the "RBF Note").

C. RBF and Debtor have entered into that certain RBF Assignment and Security Agreement dated as of November 30, 1994 to secure the payment of the RBF Note (as the same may be amended, modified or supplemented from time to time, the "RBF Security Agreement").

D. It is a condition precedent to the making of the loan referenced above by Secured Party that Debtor enter into this Agreement.

NOW, THEREFORE, in consideration of the premises, Debtor hereby agrees with Secured Party as follows:

1. Pledge. Debtor hereby pledges and assigns to Secured Party, and grants to Secured Party a first priority, continuing security interest in, the following (the "Collateral"):

(a) the RBF Note (the "Pledged Debt") and the indebtedness evidenced thereby, together with all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Debt;

(b) all rights of Debtor in the RBF Security Agreement and the collateral security thereunder, together with all rights of Debtor in any of other security agreement or instrument securing any of the Pledged Debt, and all dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Debt; and

(c) all proceeds of any and all of the foregoing Collateral.

2. Security for Obligations. This Agreement secures the payment and performance of all obligations of the Borrower now or hereafter existing under the Note, whether for principal, interest, fees, expenses or otherwise, and all obligations of Debtor now or hereafter existing under this Agreement (all such obligations being the "Obligations").

3. Delivery of Collateral. All instruments and agreements representing or evidencing the Collateral shall be delivered to and held by Secured Party pursuant hereto.

4. Representations and Warranties. Debtor represents and warrants to Secured Party as follows:

(a) The execution, delivery and performance by Debtor of this Agreement and the Note, and the borrowing of the proceeds of the Note, do not contravene any law, regulation, rule or order binding on Debtor.

(b) No government approval or filing or registration with any governmental authority is required for the making and performance by Debtor of this Agreement or the Note or in connection with any of the transactions contemplated hereby.

(c) This Agreement and the Note have been duly executed and delivered by Debtor and constitute the legal, valid and binding obligations of Debtor enforceable against Debtor in accordance with their respective terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally and except as limited by general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

(d) Debtor is the legal and beneficial owner of the Collateral free and clear of any lien, security interest, option or other charge or encumbrance except for the security interest created by this Agreement.

(e) The pledge of the Pledged Debt pursuant to this Agreement creates a valid and perfected first priority security interest in the Pledged Debt, securing the payment of the Obligations.

5. Debtor's Covenants. For the benefit of Secured Party, Debtor agrees to perform each of the following covenants:

(a) Debtor will pay before delinquency any taxes which are or may become through assessment or distraint or otherwise a lien or charge on the Collateral and will pay any tax which may be levied on any Obligation secured hereby (other than income or similar taxes). Debtor may, however, promptly and diligently contest such taxes in good faith, provided no part of the Collateral will be subject to a lien forfeiture, sale or diminution in value during such contest.

(b) Debtor will not waive, amend, modify, cancel or terminate any provision of the RBF Note or the RBF Security Agreement without the prior written consent of Secured Party.

(c) Debtor shall furnish to Secured Party, within 150 days after the end of each of RBF's fiscal years, beginning with its fiscal year ending December 31, 1994, a financial report prepared in accordance with GAAP containing RBF's balance sheet as of the end of such year, and a profit and loss statement and statement of cash flows for such year, accompanied by an opinion of RBF's certified public accountants as to

the fairness of the statements therein, together with a personal financial statement of Debtor prepared on the form heretofore furnished Secured Party or such other form as may be reasonably acceptable to Secured Party.

As used in this Section 5 and in Section 11 hereof, the following terms have the following meanings:

"Capitalized Lease Obligation" means any obligation of RBF to pay other amounts under any agreement or arrangement conveying the right to use property which, in accordance with GAAP, is required to be shown as a liability on the balance sheet of RBF.

"GAAP" means generally accepted accounting principles.

"Indebtedness" means indebtedness for borrowed money, indebtedness representing the deferred purchase price of property (excluding indebtedness under normal trade credit for property purchased in the normal course of operations), obligations under notes payable or drafts accepted representing extensions of credit, indebtedness (whether or not assumed) secured by mortgages, security interests, or other liens on property owned by RBF, and any Capitalized Lease Obligation.

"Liabilities" means all Indebtedness that, in accordance with GAAP, is required to be classified as liabilities on a balance sheet of RBF.

"Stockholders' Equity" means, at any time, the sum of the following accounts set forth in a balance sheet of RBF, prepared in accordance with GAAP: (a) the par of stated value of all outstanding capital stock; (b) capital surplus; and (c) retained earnings.

"Tangible Net Worth" means, at any time, Stockholders' Equity, less the sum of: (a) goodwill; (b) trademarks and trade names; (c) treasury stock; and (d) loans and advances to stockholders, directors, officers.

6. Payments; Exercise of Rights by Debtor. Promptly upon the execution of this Agreement, all payments on the RBF Note ("Note Payments") are to be made directly to Secured Party for the account of Debtor for application to the Note, but only to the extent that the Obligations have not been fully paid and performed. Payments are to be made to Secured Party at its address set forth below or to such other address as Secured Party may from time to time specify in writing. Debtor authorizes and directs Secured Party to endorse all Note Payments in Debtor's name and to apply such payment against Debtor's obligations under the Note. Debtor shall not exercise any rights pertaining to the Collateral without the prior written consent of Secured Party. Debtor shall not be entitled to receive and retain any interest, principal or other amounts paid in respect of the Collateral, and all amounts paid or payable, whether or not in cash, in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Collateral, shall be delivered to Secured Party and, if received by Debtor, shall be received in trust for the benefit of Secured Party, be segregated from the other property or funds of Debtor, and be forthwith delivered to Secured Party in the same form as so received (with any necessary indorsement or assignment).

7. Release of Collateral, Etc. The obligations of Debtor shall not be affected by the release or substitution of any collateral (including the Collateral) or by the release of or any renewal or extensions of time to any party to any instrument, obligation or liability secured hereby. Secured Party shall not be bound to resort to or exhaust its recourse or to take any action against other parties or other collateral. Debtor expressly waives the benefit of any and all defenses available to sureties under applicable law. Debtor hereby waives presentment, demand, protest, notice of protest and notice of non-acceptance or non-payment with respect to any Obligation described herein.

8. Secured Party Appointed Attorney-in-Fact. Debtor hereby appoints Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, indorse and collect all instruments made payable to Debtor representing any interest or principal payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same, and to (in each case, upon notice to Debtor) ask, demand, receive, receipt and give acquittance for any and all amounts which may be or become due or payable to Debtor with respect to the Collateral, and, in Secured Party's sole discretion, to file any claim or take any action or proceeding, or either, in its own name or in the name of Debtor, or otherwise, which Secured Party deems necessary or desirable in order to collect or enforce payment and performance of the RBF Note and the RBF Security Agreement. The acceptance of this appointment by Secured Party shall not obligate it to perform any duty, covenant or obligation required to be performed by Debtor under or by virtue of RBF Note or the RBF Security Agreement.

9. Secured Party May Perform. If Debtor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Debtor under Section 13.

10. Further Assurances. Debtor, at its sole cost and expense, will at all times hereafter (a) execute such financing statements and other instruments and perform such other acts as Secured Party may reasonably request to establish and maintain the security interests herein granted and the priority and continued perfection thereof; (b) obtain and promptly furnish to Secured Party evidence of all such government approvals as may be required to enable Debtor to comply with its obligations under this Agreement and under the Note; (c) not change its address, unless prior written notice of such a change shall have been given to Secured Party; and (d) execute and deliver all such other instruments and perform all such other acts as Secured Party may reasonably request to carry out the transactions contemplated by this Agreement and the Note.

11. Events of Default. If any of the following events shall occur and be continuing, it shall constitute an "Event of Default" hereunder:

- (a) Secured Party shall fail to receive when due any amount of principal or interest due under the Note and such failure shall continue for a period of ten (10) days after notice to Debtor of the same; or

(b) Secured Party shall fail to receive for a period of ten (10) days after the date when due, any amounts payable to it under the terms of this Agreement; or

(c) Any representation or warranty made by Debtor under or in connection with this Agreement or the Note shall prove to have been incorrect in any material respect when made; or

(d) Debtor shall fail to perform or observe any other covenant, obligation or term of this Agreement, and such failure shall remain unremedied for thirty (30) days after notice thereof to Debtor of the same; or

(e) Debtor shall fail to pay or perform any other obligation to Secured Party when due, RBF shall fail to perform or pay any recourse obligation to Secured Party when due or an "Event of Default" (as such term is defined in that certain GE Assignment and Security Agreement dated as of November 30, 1994 between Secured Party and RBF) shall occur, and in each case such failure shall continue unremedied for a period of sixty (60) days after notice thereof to Debtor of the same; or

(f) A proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt or receivership law or statute is filed (i) against Debtor and an adjudication or appointment is made or order for relief is entered, or such proceeding remains undismissed for a period in excess of sixty (60) days, or (ii) by Debtor or Debtor makes an assignment for the benefit of creditors; or

(g) Debtor becomes insolvent or fails generally to pay Debtor's debts as they become due; or

(h) RBF shall, for more than 30 days, fail to maintain Tangible Net Worth of at least Four Million Eight Hundred Thousand Dollars and 00/100 (\$4,800,000.00); or

(i) RBF shall, for more than 30 days, fail to maintain a ratio of total Liabilities (excluding therefrom Liabilities which are non-recourse to RBF) to Tangible Net Worth of not more than 3.0 to 1.0.

12. General Remedies. If an Event of Default shall occur, Secured Party shall have all remedies provided by law and, without limiting the generality of the foregoing, shall have the following remedies:

(a) The remedies of a secured party under the Uniform Commercial Code; and

(b) The right to make notification and pursue collection or, at Secured Party's option, to sell all or part of the Collateral and make application of all proceeds or sums due on the Collateral to the Obligations at its sole discretion; and

(c) The right to enter any premises where any of the Collateral is situated and take possession of such Collateral without notice or demand and without legal proceedings hereof; and

(d) All other remedies which may be available in law or equity.

To the extent that notice of sale shall be required by law to be given, Debtor agrees that a period of five (5) days from the time the notice is sent shall be a reasonable period of notification of a sale or other disposition of Collateral by Secured Party, and that any notice or other communication from Secured Party to Debtor under this Agreement or required by any statute may be given to Debtor by personal delivery, telex, telegram or mail (with first-class postage prepaid) in each case sent or delivered to Debtor at the address set forth under its name on the signature page hereof. All such notices and communications if duly given or made shall be effective upon the earlier of receipt or two (2) business days after deposit in the mail. Debtor agrees to pay on demand the amount of all reasonable costs, attorneys fees and legal expenses incurred by Secured Party in exercising its rights and remedies herein, and Debtor further agrees that its obligation to pay such amounts shall bear interest from the date such expenditures are made by Secured Party until repaid at the interest rate provided for past-due payments of principal under the Note and shall be secured hereby. Secured Party agrees to pay forthwith to Debtor any surplus remaining from the Collateral after payment of all indebtedness secured hereunder, and all unpaid costs and expenses due Secured Party hereunder.

13. Expenses. Debtor shall upon demand pay to Secured Party the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which Secured Party may incur in connection with (i) the exercise or enforcement of any of the rights of Secured Party hereunder or (ii) the failure by the Debtor to perform or observe any of the provisions hereof.

14. Waivers. This Agreement shall not be qualified or supplemented by course of dealing. No waiver or modification by Secured Party of any of the terms and conditions hereof shall be effective unless in writing signed by Secured Party. No waiver or indulgence by Secured Party as to any required performance by Debtor shall constitute a waiver as to any required other performance or obligations of Debtor hereunder.

15. Severability. In case any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect in any jurisdiction, the validity, legality and enforceability of such provision or provisions will not in any way be affected or impaired thereby in any other jurisdiction; and the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

16. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Illinois except where the location of Collateral requires that the creation, validity, perfection, the effect of non-perfection, or enforcement of the security interests provided for herein may be governed by the laws of the jurisdiction where such collateral is located. Debtor hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois in any action or proceeding brought to enforce or otherwise arising out of or relating to the Note or this Agreement.

17. Successors. This Agreement inures to the benefit of Secured Party and its successors and assigns, and shall bind the heirs, personal representatives, successors and assigns of Debtor. Secured Party may assign or transfer the whole or any part of the

Obligations and may transfer therewith as collateral security its security interest in the whole or any part of the Collateral and all obligations, rights, powers and privileges herein provided shall inure to the benefit of the assignee to the extent of such assignment. Debtor will not sell, transfer, assign, or encumber any interest in the Collateral, or its rights under this Agreement. Secured Party agrees that, in the event of any transfer by it of the Note, it will endorse thereon a notation as to the portion of the principal of the Note which shall have been paid at the time of such transfer and as to the date to which interest shall have been last paid thereon.

18. Quiet Enjoyment. Capitalized terms used in this Section 18 and not otherwise defined in this Agreement shall have the meanings given to such terms in the RBF Security Agreement to the extent the same are defined therein. Notwithstanding any other provision of this Agreement, Secured Party agrees that its security interest and rights under the RBF Security Agreement are subject to the rights of the Lessees under the Leases and, so long as no "Event of Default" (as such term is defined in the GE Lease) shall have occurred and is continuing, Secured Party shall not disturb Lessees' peaceful possession of the Equipment and Lessees' right to use the Equipment for its intended purposes pursuant to the terms of the Leases. In any event, (i) Secured Party shall not breach any of RBF's obligations under the Leases or exercise any rights of RBF as lessor under the Leases as assignee of RBF and Debtor except in accordance with the terms thereof and applicable law, and (ii) Secured Party shall not breach the RBF Security Agreement.

19. Counterparts. This Agreement may be executed in separate counterparts all of which, when taken together shall constitute but one and the same instrument.

20. Termination. This Agreement and the security interest of Secured Party in the Collateral granted hereunder shall terminate and be released upon the payment and performance in full of the Obligations. Upon such occurrence, Secured Party shall execute and deliver to Debtor such termination statements, releases and other instruments as Debtor may reasonably require to evidence such termination and release and return to Debtor any original instruments or documents held by Secured Party.

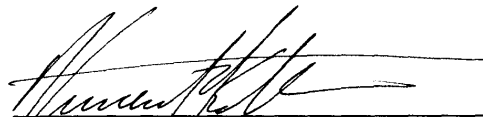
21. Modification of Financial Defaults. If Old Kent Bank or any successor financier to Old Kent Bank shall amend, delete or modify the financial covenants contained in its loan agreement with RBF which are presently comparable to the Events of Default contained in Sections 11(h) and (i) of this Agreement, and if Secured Party shall be unwilling to enter into a conforming amendment to such sections in this Agreement, then, notwithstanding the terms of the Note, Debtor may within sixty (60) days thereafter prepay the Note without any premium, penalty or prepayment fee.

22. WAIVER OF JURY TRIAL. DEBTOR AND SECURED PARTY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. DEBTOR AND SECURED PARTY ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF SECURED PARTY. THIS WAIVER IS INTENDED TO BE EFFECTIVE WITH RESPECT TO ALL DISPUTES WHICH ARISE OUT OF THIS AGREEMENT OR PERTAIN TO THE TRANSACTIONS CONTEMPLATED HEREBY. DEBTOR AND SECURED PARTY EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL

INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH ALREADY HAS RELIED ON SUCH WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON SUCH WAIVER IN THEIR RELATED FUTURE DEALINGS. DEBTOR AND SECURED PARTY FURTHER WARRANT AND REPRESENT THAT EACH KNOWINGLY AND VOLUNTARILY HAS WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, AND MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND SUCH WAIVER SET FORTH HEREIN SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, the parties hereto have entered this Agreement as of the date and year first above written.

Debtor:



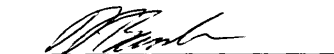
Vincent A. Kolber, Individually

Address: Three First National Plaza
Suite 1240
Chicago, Illinois 60602

Secured Party:

HELLER FINANCIAL, INC.

By:



David A. Sands

Vice President

Address:

500 West Monroe Street
Chicago, Illinois 60661

Acknowledgement

The undersigned hereby acknowledges receipt of a notice of and a copy of the foregoing VAK Pledge Agreement and agrees that it will make all Note Payments (as defined above) as provided therein.

Date: November 30, 1994

Residual Based Finance Corporation

By: _____
Title: President

State of Illinois)
) ss:
County of Cook)

On this 29th day of November, 1994, before me, personally appeared David A. Sands, to me personally known, who being by me duly sworn, says that he is the Vice President of Heller Financial, Inc., a Delaware corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

Rosemarie Lewandowski
Signature of Notary Public

My commission expires 10-27-96.

Subscribed and sworn to before me
this 29th day of November, 1994.



State of Illinois)
) ss:
County of Cook)

On this 29th day of November, 1994, before me, personally appeared Vincent A. Kolber, to me personally known, who being by me duly sworn, says that the foregoing instrument was signed by him, and he acknowledged that the execution of the foregoing instrument was his free act and deed.

[Seal]

Rosemarie Lewandowski
Signature of Notary Public

My commission expires 10-27-96.

Subscribed and sworn to before me
this 29th day of November, 1994.

